

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: SB 1088

INTRODUCER: Senator Siplin

SUBJECT: Three Kings Day

DATE: March 4, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vickers</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	Pre-meeting
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill designates January 6 as “Three Kings Day” and authorizes local governments to annually issue a proclamation commemorating the occasion, and calls upon the residents of the State of Florida to observe the occasion.

This bill creates section 683.33 of the Florida Statutes.

II. Present Situation:

Chapter 683, F.S., relates to legal holidays and special observances. Section 683.01, F.S., designates 21 legal holidays, including Good Friday and Christmas. Other provisions in ss. 683.04-683.25, F.S., designate special observances or explain the significance of certain legal holidays.

Section 683.19, F.S., authorizes chief circuit judges to designate Rosh Hashanah, Yom Kippur, and Good Friday as legal holidays for the courts within their respective judicial circuits.

Three Kings Day (Dia de los Reyes) is celebrated 12 days after Christmas on January 6. Also known as the Epiphany, Three Kings Day is a celebration that commemorates the Biblical story of the three kings (or wise men) that followed the star of Bethlehem to bring gifts to the Christ child. This holiday is widely celebrated in the Hispanic community, especially by Mexican-Americans.

III. Effect of Proposed Changes:

Section 1 creates s. 683.33, F.S, which designates January 6 of each year as “Three Kings Day” and provides that local governments may annually issue a proclamation commemorating January 6 as “Three Kings Day” and calling upon the residents of the state to observe the occasion.

Section 2 provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Federal Constitutional Law:

In its current form, this bill could be challenged as a violation of the Establishment Clause of the U.S. Constitution.

The 1st Amendment to the U.S. Constitution provides, in part, that “Congress shall make no law respecting an establishment of religion...” This provision, made applicable to the states by the Fourteenth Amendment, has generally been interpreted to restrict a unit of federal, state, and local governments from promoting or affiliating itself with any particular religious doctrine or organization, discriminating among persons on the basis of their religious beliefs and practices, delegating a governmental power to a religious institution, or involving itself too deeply in such an institution’s affairs.¹

To evaluate whether laws or policies violate these restrictions, courts have applied an analysis from *Lemon v. Kurtzman*,² which requires that the challenged practice:

- have a valid secular purpose,
- not have the effect of advancing or inhibiting religion, and
- not foster excessive government entanglement with religion.

¹ *County of Allegheny v. ACLU*, 492 U.S. 573, 589, 109 S.Ct. 3086, 3099 (1989).

² *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105 (1971).

The difficulty in consistently applying the test from *Lemon v. Kurtzman* to specific circumstances is illustrated by two decisions the U.S. Supreme Court handed down in the 2004-2005 term. In *McCreary County v. ACLU*,³ the Court, applying the *Lemon* test, ruled that the Ten Commandments display in a Kentucky courthouse violated the Establishment Clause, finding that the displays lacked a primary secular purpose. In *Van Orden v. Perry*,⁴ the Court found that the *Lemon* test was not determinative in evaluating whether an edifice on the grounds of the Texas state capitol depicting the Ten Commandments contravened the Establishment Clause, and looked to the nature of the monument and history in holding that the edifice did not violate the Establishment Clause.

A lower federal court applied the *Lemon* test to an Indiana law that designated Good Friday as a legal holiday for state employees, and upheld the law in finding that it did not violate the Establishment Clause because the holiday was based on several secular justifications.⁵

To the extent that this bill promotes a non-secular purpose, it is subject to challenge under the *Lemon* test, and may be declared unconstitutional.

Florida Constitutional Law:

Article I, Section 3 of the Florida Constitution provides that “[t]here shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof,” and that “[n]o revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.”

Local government actions related to religious holidays have been addressed by Florida courts. In 1994, the 2nd District Court of Appeal of Florida upheld a Clay County ordinance outlawing the sale of alcohol on Christmas Day and Christmas night.⁶ The court held that Christmas, notwithstanding its deep religious significance for many, also has secular traditions which local government is free to acknowledge, without offending the constitutions either of Florida or of the United States. The court found that “[a]ny statute that passes muster under article 1, section 3 of the Florida Constitution necessarily meets the federal Establishment clause test,” because of the additional “no aid” provision in the Florida Constitution.⁷ Applying the *Lemon* test in upholding the constitutionality of the ordinance, the court was “unable to discern any religious principle that the ordinance under challenge endorses,” and found that it did not have the primary effect of advancing religion.⁸

³ 125 S.Ct. 2722 (2005).

⁴ 128 S.Ct. 2854 (2005).

⁵ *Bridenbaugh v. O’Bannon*, 185 F.3d 796 (1999).

⁶ *Silver Rose Entertainment, Inc., v. Clay County*, 646 So.2d 246 (Fla. 1st DCA 1994).

⁷ *Id.* at 251.

⁸ *Id.* at 252.

(Though recent decisions on the constitutionality of the Florida's Opportunity Scholarship Program addressed Article 1, Section 3, of the state constitution, those decisions have largely analyzed the "no aid" clause.)

To the extent that this bill promotes a non-secular purpose, or has the effect of advancing religion, it is potentially subject to challenge under the U.S. and Florida constitutions, and could be declared unconstitutional under either federal or Florida law.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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